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ABSTRACT

This paper examines reasons why academic libraries need to educate patrons about copyright. The first section discusses legal reasons, including the protection of intellectual property rights in the U.S. Constitution, copyright legislation, and the doctrine of fair use. The second section considers decreasing profit margins for providers of intellectual property, including publishing and recording industry fights against copyright infringement and for stricter copyright law. The third section states that nobody else is doing instruction about copyright, and it is natural that libraries should take the lead in this area. (MES)

Copyright and the Need for Academic Libraries to Educate Patrons

ED 455 840

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Of all the issues facing librarianship today, few are as important as copyright. Traditionally a concern to interlibrary loan departments, reserves desks, and administrators setting photocopier policies, copyright now touches on almost every area of the academic library. Spend a few hours on the reference desk, and you will observe patrons using full-text online databases to download articles, photocopying articles, looking for reserve materials both in print and on line, and even searching for downloadable music files. All of these activities are possible infringements on copyright, making copyright a concern for most if not all staff in the modern academic library.

In addition, patrons from community users to students to faculty have very little understanding of copyright and fair use. Library patrons are increasingly expecting to download from the World Wide Web everything they want or need, with little or no regard for intellectual property rights of the creators. Students want to download the latest hit song for free; faculty members want to find all their research online, and want to post course readings freely. Their mistaken assumption is that they are entitled to infringe on the copyrights of anything, because they are affiliated with an educational institution.

Clearly, more needs to be done to educate the academic community about the concepts of copyright and fair use. Librarians, in their role as a liaison between intellectual property producers (publishers, music companies, etc.) and consumers (library patrons) are in a unique position to provide this education, but very little is currently being done. Searches of library and education databases turn up very little information on teaching about these concepts as part of libraries' instructional programs.

The author believes that more work needs to be done to educate patrons about copyright, and that if they do not do so, a good deal of trouble lies ahead in the near future.

Why Do Libraries Need to Educate Patrons About Copyright?

1. It's the law:

The United States Constitution clearly protects the rights of intellectual property producers. In Article I, section 8, cl. 8, it states, "The Congress shall have Power...to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors, the exclusive Right to their respective Writings and Discoveries."¹ The framers clearly intended to protect the rights of authors and inventors, at least to some degree. Congress formally legislated the right of the government to protect intellectual property under Title 17 of the United States Code.² The Copyright Act of 1976 granted protection to a work published before 1978 for 75 years after first publication, and the life of the author plus 50 years if published after 1978.³ In 1998, Congress adopted two significant revisions to copyright law in response to the availability of digital electronic technology. The Digital Millennium Copyright Act allows publishers to protect their property through encryption, passwords, and other technological means while still providing some fair use for preservation, distance education, and electronic loan. The Sonny Bono Copyright Term Extension Act extended the term of protection of post-1978 published items from life of the author plus 50 years to life plus 70 years.⁴

Because it was seen early that the free exchange of information would be necessary to promote research and inquiry, the doctrine of fair use has evolved.

Basically, this doctrine states that some use of copyrighted materials without permission or payment is allowed. Libraries, for example, are allowed to make a limited number of copies for preservation purposes when a reasonably priced item is not available, to facilitate private study and research, and for interlibrary loan purposes.⁵ In addition, the Copyright Law of 1976 states that duplication of copyrighted material without permission from or payment to the creator "...for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright."⁶ Four factors that must be considered when a determination of fair use is made are: 1.) The purpose and character of the use, including whether such use is commercial or non-profit and educational; 2.) The nature of the copyrighted work; 3.) The amount and substantiality of the portion used in relation to the work as a whole; and 4.) The effect of the use on the potential market value of the copyrighted work.⁷ According to Schockmel, the Copyright Law of 1976 "...was crafted in an ambiguous fashion; it does not attempt to define the boundaries of fair use. Determination of fair use is to be made on a case by case basis, with an examination of the particular circumstances of each use." There is no "blanket" assumption of fair use for educational institutions. Each use needs to be considered individually.⁸ Librarians may not agree with it, but as Berger puts it, "Whether librarians question the law is irrelevant; students must understand the law as it exists today and debate its merits elsewhere."⁹

2. Decreasing profit margins for providers of intellectual property:

The market for publishing and recording companies is extremely tight. Therefore, in order to remain in business, they are increasingly likely to fight against copyright

infringement and for stricter copyright laws.¹⁰ In the music industry, record companies and individual artists are suing the online music trading site Napster.com. In fact, the author's current university, along with USC and Yale, was sued by the band Metallica for allowing students to access Napster. These institutions blocked Napster access on campus networks and the suit was dropped. While universities have an obligation to fight for access to information, they need to balance this with the need for intellectual property owners to remain in business. "It is essential the public understand that American creativity would suffer without the protection that copyright provides."¹¹ So, to avoid legal entanglements at the least, librarians need to teach library patrons about copyright.

3. Nobody else is doing it:

While copyright law has a major effect on academia, from the author's experience and the experiences of several colleagues, neither students nor faculty have a clear understanding of copyright or the limited nature of fair use. Searches in library and education databases confirm that instruction about copyright is not an important topic or focus for libraries or for teaching faculty. Libraries are missing an important opportunity to provide instruction on this issue, and nobody in academia is in a better position to teach this than librarians who instruct patrons in classroom settings, online tutorials, or at service points like reference desks and reserves departments. As the mediators between content and users, it is only natural that libraries take the lead in educating about copyright.

Summary

While in a perfect world all people would have unlimited access to all information freely, sadly this is not the case. Copyright laws are a reality we in the academic library community need to face. Adequately training library patrons in the basics of copyright law and fair use will go a long way towards reducing the conflicts between the publishing and recording industries and the academic community.

¹ Richard B. Schockmel, "The premise of copyright, assaults on fair use, and royalty use fees," *The Journal of Academic Librarianship* 22 (1996): 15-25.

² Karen I. Wagner, "Intellectual property: copyright implications for higher education," *The Journal of Academic Librarianship* 24 (1998): 11-19.

³ Ibid.

⁴ Judith L. Marley, "Guidelines favoring fair use: An analysis of legal interpretations affecting higher education," *The Journal of Academic Librarianship* 25 (1999): 367-371.

⁵ Wagner, 1998.

⁶ Schockmel, 1996.

⁷ Ibid.

⁸ Ibid.

⁹ Sidney E. Berger, "In defense of instruction librarians," *Research Strategies* 13 (1995): 140-143.

¹⁰ Wagner, 1998.

¹¹ Ibid.